

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE C. WALKER,	§
	§
Defendant Below,	§ No. 295, 2021
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 1005009912 (N)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 13, 2021

Decided: January 26, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

**ORDER**

Upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Andre C. Walker, filed this appeal from the Superior Court’s August 20, 2021 order summarily dismissing his motion for postconviction relief and denying his motion to correct an illegal sentence.<sup>1</sup> The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Walker’s opening brief that the appeal is without merit. We agree and affirm.

---

<sup>1</sup> *State v. Walker*, 2021 WL 3700939 (Del. Super. Ct. Aug. 20, 2021).

(2) The record reflects that, in November 2010, a Superior Court jury found Walker guilty of first-degree robbery and other crimes. The State filed a motion to declare Walker an habitual offender under 11 *Del. C.* § 4214(b) and for Walker to be sentenced for first-degree robbery under Section 4214(b). The State's first petition was based on Walker's previous convictions for drug trafficking in 1990 and first-degree robbery in 1999, but the second petition was on based on Walker's previous convictions for first-degree robbery in 1990 and 1999. At the hearing on the petition, the State presented witnesses to prove Walker's predicate offenses because Walker contested the petition. The Superior Court granted the petition and sentenced Walker as follows: (i) for first-degree robbery, as an habitual offender under Section 4214(b), to life imprisonment without the award of good time; and (ii) for possession of a deadly weapon during the commission of a felony, criminal mischief, resisting arrest, and two counts of aggravated menacing, to an aggregate of seventeen years of Level V incarceration, suspended after ten years for Level III probation.

(3) On appeal, Walker argued, among other things, that he should not have been declared an habitual offender because he was not offered drug counseling, the predicate offenses were too old, and the Superior Court erred in allowing the prosecutor to present witnesses at the habitual offender hearing.<sup>2</sup> This Court

---

<sup>2</sup> *Walker v. State*, 2011 WL 3904991, at \*2 (Del. Sept. 6, 2011).

affirmed the Superior Court's judgment.<sup>3</sup> Walker then filed a timely motion for postconviction relief under Superior Court Criminal Rule 61 and a motion for appointment of counsel. The Superior Court denied both motions. After reversing the Superior Court's denial of Walker's motions, this Court affirmed the Superior Court's denial of the motion for postconviction relief that Walker filed with the assistance of counsel.<sup>4</sup> The Superior Court has denied motions for sentence reduction or modification that Walker filed in 2011, 2016, and 2019.

(4) On August 16, 2021, Walker filed a joint motion for postconviction relief under Rule 61 and to correct an illegal sentence under Rule 35(a). The Superior Court summarily dismissed Walker's Rule 61 claims as procedurally barred and denied his illegal sentence claims.<sup>5</sup> This appeal followed.

(5) We review the Superior Court's denial of a Rule 61 motion for postconviction relief and a Rule 35 motion for correction of illegal sentence for abuse of discretion.<sup>6</sup> We review questions of law *de novo*.<sup>7</sup>

(6) In his opening brief, Walker argues that: (i) he is actually innocent of the predicate offenses underlying the State's habitual offender petition; (ii) his

---

<sup>3</sup> *Id.* at \*2-3.

<sup>4</sup> *Walker v. State*, 2016 WL 2654347 (Del. May 2, 2016); *Walker v. State*, 2013 WL 3355899 (Del. June 28, 2013).

<sup>5</sup> *Walker*, 2021 WL 3700939, at \*2.

<sup>6</sup> *Fountain v. State*, 2014 WL 4102069, at \*1 (Del. Aug. 19, 2014); *Ploof v. State*, 75 A.3d 811, 820 (Del. 2013).

<sup>7</sup> *Fountain*, 139 A.3d at 840; *Ploof*, 75 A.3d at 820.

claims are not procedurally barred because he did not have counsel for his first Rule 61 motion; and (iii) the habitual offender sentence is illegal because there is a seven-year time limit for prior felony convictions to qualify as predicate offenses and the State provided insufficient notice of the second habitual offender petition. These claims are without merit.

(7) As the Superior Court recognized, Walker's second motion for postconviction under Rule 61 was procedurally barred because he filed it more than a year after his convictions became final, it was successive, and it raised claims that could have been raised previously or were previously adjudicated.<sup>8</sup> To overcome the procedural bars, Walker relied on Rule 61(d)(2)(i). This Rule provides that the court will not summarily dismiss a second or subsequent Rule 61 motion if the movant was convicted after trial and pleads with particularity new evidence creating a strong inference of actual innocence "in fact of the acts underlying the charges of which he was convicted."<sup>9</sup> Even assuming Walker can challenge the first-degree robbery convictions underlying the State's habitual offender petition in this proceeding, he offers nothing to suggest that he is actually innocent of those crimes. Nor has he offered anything to suggest that he is actually innocent of the convictions in this case.

---

<sup>8</sup> *Walker*, 2021 WL 3700939, at \*2. See also Super. Ct. Crim. R. 61(i)(1)-(4).

<sup>9</sup> Super. Ct. Crim. R. 61(d)(2)(i).

(8) As to Walker’s argument that he is entitled to relief because he was not appointed counsel for his first Rule 61 motion, the Superior Court appointed counsel to represent him after this Court reversed the Superior Court’s prior order denying his motion for appointment of counsel.<sup>10</sup> To the extent Walker argues that his postconviction counsel was ineffective, he fails to explain how postconviction counsel was ineffective. The Superior Court did not err therefore in summarily dismissing Walker’s Rule 61 claims.

(9) Finally, the Superior Court did not err in denying Walker’s Rule 35 claims. A sentence is illegal under Rule 35(a) when it exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to substance, or is a sentence that the judgment of conviction did not authorize.<sup>11</sup> This Court has previously rejected Walker’s argument that prior felony convictions must fall within the statute of limitations to qualify as predicate offenses under Section 4214.<sup>12</sup> As to Walker’s claim that the State did not provide sufficient notice of the second habitual offender

---

<sup>10</sup> *Walker*, 2013 WL 3355899, at \*1.

<sup>11</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del.1998).

<sup>12</sup> *Walker v. State*, 2011 WL 3904991, at \*2 (noting that the General Assembly “adopted no statute of limitations on the prior felony convictions that may establish a defendant’s status as a habitual offender” and rejecting Walker’s argument that his prior felony convictions were too old to be considered predicate offenses).

petition, his trial counsel acknowledged that petition at the habitual offender hearing and sentencing, although he admitted that he originally thought it was a duplicate copy of the first petition. Walker characterizes this claim as arising under Rule 35(a), but it is actually a claim that his sentence was imposed in an illegal manner under Rule 35(b).<sup>13</sup> Such a claim must be asserted within ninety days of sentencing.<sup>14</sup> The Superior Court may consider “an application made more than 90 days after the imposition of sentence...in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217,” but neither exception applies to this case.<sup>15</sup>

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura  
Justice

---

<sup>13</sup> See, e.g., *Reed v. State*, 2018 WL 816675, at \*1 (Del. Feb. 9, 2018) (classifying claims challenging the notice, hearing, and decision on habitual offender petition as attacks on manner in which sentence was imposed).

<sup>14</sup> Super. Ct. Crim. R. 35(b).

<sup>15</sup> *Id.*